In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-665

LEONARD J. CIACCIO, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner contends that the evidence was insufficient to sustain his conviction for knowing possession of an illegal firearm.

After a jury-waived trial in the United States District Court for the District of Maryland, petitioner was convicted of knowingly possessing a firearm not registered to him and not identified by a serial number, in violation of 26 U.S.C. 5861(d) and (i). He was sentenced to concurrent terms of four years' imprisonment. The court of appeals affirmed *per curiam* (Pet. App. A).

The evidence showed that, in the course of a general inspection of petitioner's night club in Baltimore, pursuant to a warrant, IRS agents found on a shelf in a room-sized

vault a green cash box which contained a .32 calibre pistol and ammunition. The pistol had a threaded attachment on the front of its barrel. The agents also found on another shelf a silencer which exactly fitted the threaded attachment of the pistol. The silencer was hand made, unregistered, and carried no identifying serial number, as required by statute (Pet. App. 2a-3a).

After being advised of his rights, petitioner stated that all of the club's business was in cash, which was kept in the vault along with the liquor stock. Petitioner had exclusive access to the vault. When petitioner arrived in the evening, he would open up the vault, check out supplies, and remain at the club until 2:00 o'clock closing time (S. App. 125-128).[1] Petitioner also stated that his club had been robbed of $2,700 some months previously but that he had not reported this occurrence to the police (S. App. 84-85, 171-172).

The evidence furnished sufficient basis for the court's inference that petitioner knowingly possessed the illegal silencer. The hand-made silencer exactly fitted the threaded attachment on the pistol. Petitioner stated that he had exclusive access to the vault in which the silencer and pistol were found. The court noted in addition that petitioner was the person who locked and unlocked the vault, and that it was reasonable to infer that the owner of the club would keep a weapon for the purpose of defending himself and his property, whereas it would not be reasonable to suppose that an employee or some other person had secreted it there, thereby partially losing control over it (Pet. App. 7a-8a).

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[1] "S. App." refers to the appellant's separate appendix in the court of appeals, which we are lodging with the Court.

Petitioner contends that the government failed to prove that the vault was normally locked or to corroborate petitioner's assertions of exclusive access to the vault.[2] But it was not necessary for the government to prove beyond peradventure that petitioner had exclusive access to the vault; access was only one factor leading to the conclusion that petitioner knowingly possessed an illegal firearm. Viewing all the evidence in the light most favorable to the government, *Glasser* v. *United States*, 315 U.S. 60, the evidence was sufficient to support the conviction.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

DECEMBER 1974.

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[2]Contrary to petitioner's contention, *Opper* v. *United States*, 348 U.S. 84, does not require that every statement of fact made by a defendant be directly corroborated by other testimony. The mere fact that petitioner was the owner of the club would give sufficient ground for the fact trier to credit his assertions concerning access to the vault and the operation of the business during the day shift.

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